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NO. 90-810

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

ROLAND C. DART, III, JIM JAKSCH, ROBERT LEWIS, THOMAS HAUSER and CITY OF VALLEJO,

Petitioners,

v.

JAMES FORRESTER,

Respondent.

On Petition for a Writ of Certiorari to The United States Court of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether California Government Code Section 945.3 which tolls the statute of limitations for civil actions against a peace officer and the public entity employing the peace officer while criminal charges are pending is applicable to federal civil rights actions filed pursuant to 42 U.S.C. section 1983.

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ARGUMENT

State Tolling Provisions Govern 42 U.S.C. Section 1983 Actions Unless Inconsistent With Federal Policy or the Goals of the Civil Rights Statutes

Congress provided no federal statute of limitations or tolling scheme for 42 U.S.C. section 1983 claims. Instead, 42 U.S.C. section 1988 provides that where a civil rights statute is

> deficient in the provisions necessary to furnish suitable remedies and punish offenses against the law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause...

Because no federal statute of limitation governs, "the length of the limitations period and closely related questions of tolling and application are to be governed by state law." Wilson v. Garcia 471 U.S. 261, 271 (1985).

Courts must necessarily apply state

tolling provisions with the understanding that:

> [a]ny period of limitation.... is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action. Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of state ones. In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application. In borrowing a state period of limitation for application to a federal cause of action, a federal court is relying on the State's wisdom in setting a limit, and exceptions thereto, on the prosecution of a closely analogous claim. Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 463-464 (1975).

State tolling provisions are "more than a technical obstacle to be

circumvented if possible. In most cases they are binding rules of law." Board of Regents of the University of the State of New York v. Tomanio 446 U.S. 478, 483-484 (1979). As this Court has acknowledged, there is nothing "peculiar to a federal civil rights action to justify special reluctance in applying state law. Indeed, the express terms of 42 U.S.C. 1988 suggest that the contrary is true." Johnson v. Railway Express Agency, Inc., supra. at 464.

The chief goals of 42 U.S.C. Section 1983 are compensation and deterrence. Its subsidiary goals are the promotion of uniformity and federalism. Hardin v. Straub 490 U.S. 536, 109 S.Ct. 1998 (1989) citing Board of Regents v. Tomanio, supra. at 488-492.

Recently, this Court has held that a state statute which tolled the statute

of limitations for Section 1983 actions by prisoners during incarceration was consistent with the remedial goals of Section 1983. Hardin v. Straub, supra. at 538. This Court has acknowledged:

> a federal interest in disposing of all litigation in the federal courts as expeditiously as possible. But the interest in prompt resolution of disputes is vindicated by all statutes of limitations and always must be balanced against the countervailing interest in allowing valid claims to be determined on their merits. Although there is no reason why Congress could not strike that balance in Section 1983 cases by enacting a federal statute of limitations, it has not done so. Rather....it has tacitly approved of the practice of relying on state legislatures to balance these conflicting interests. Thus the interest in prompt adjudication cannot properly be characterized as a separate interest that is "inconsistent" with Michigan's tolling provision; rather, it is one of the interests that Michigan has weighed in arriving at the limitations policy that federal courts must borrow. Id. at 538 n. 10.

Other Federal laws and legislation indicate that a provision which reasonably delays bringing a civil rights action for damages but in no way deters the bringing of such an action does not necessarily frustrate the purposes of the civil rights statutes.[1]

This Court has held that no federal policy prevents a civil rights plaintiff from benefiting from a tolling provision

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[1] In enacting 42 U.S.C. Section 1997 Congress directed that a court may continue a case for up to 90 days to permit a prisoner to exhaust available administrative remedies which have been certified as adequate by the State's Attorney General.

Federal tolling provisions also permit delay in filing actions arising out of a prosecution of the Clayton Act. It provides that "whenever any.... criminal prosecution is instigated by the United States to....punish violations of any of the anti-trust laws the statute of limitations for a private right of action shall be tolled during the pendency of the prosecution and one year." American Pipe and Construction Co. v. Utah 414 U.S. 538, 560 (1974).

simply because he or she is not subject to its disabilities. Chardon v. Fumero Soto 462 U.S. 650, 657 (1983). (state tolling provision restarts statute of limitations period for individuals, even unnamed plaintiffs, when a class fails to be certified does not offend any federal policy of deterrence, compensation, uniformity or federalism).

Considerations of federalism are quite appropriate in adjudicating federal suits based on Section 1983. Board of Regents v. Tomanio, supra at 492 citing Younger v. Harris, 401 U.S. 37 (1971) The policy against federal court interference with state criminal proceedings is based in part on the idea of comity, "that is, a proper respect for state functions." Younger v. Harris, supra at 44. Circumstances justifying an exception to the Younger doctrine are

extremely rare. Kegler v. Helfant 421 U.S. 117, 123-126 (1975) This is especially true where federal court relief could prejudice the conduct of the trial on the merits. Stefanelli v. Minard 342 U.S. 117 (1951). Application of the State provision which tolls the statute of limitations for filing suit against a peace officer while criminal charges are pending is consistent with principles of federalism.

Cal.Gov.Code Section 945.3 is Consistent With Federal Policy and the Goals of the Civil Rights Statutes

One of the State Legislature's purposes underlying Section 945.3 was to eliminate the use of civil damage complaints as plea bargaining levers. McAlpine v. Superior Court 209 Cal.App.3d 1, 1 (1989). Another purpose was to prevent the use of civil discovery

statutes to inquire into prosecutorial materials and investigative information while criminal charges are pending. Mohlmann v. City of Burbank 179 Cal.App.3d 1037, 1042 (1986). It is important to note that Section 945.3 is very narrowly tailored to achieve these substantive state policies. It only prohibits actions for money or damages during initial criminal proceedings. It does not delay access to federal court by a criminal defendant seeking equitable relief. It specifically permits claims to be filed during appeals and thus does not require a final resolution of all criminal matters relating to a claim. McAlpine v. Superior Court, supra at 1.

Conversely, Section 945.3 provides the same protection to potential civil rights plaintiffs while they are facing prosecution. As a practical matter, plea

negotiations are a two way street. A person facing criminal prosecution may be reluctant to bring a lawsuit against those who may influence or affect the outcome of the investigation and prosecution, including potential witnesses. As the Ninth Circuit pointed out, Section 945.3 serves the independent policy objective of encouraging a criminal defendant to await the outcome of the criminal action before filing suit by extending the filing period. Harding v. Galceran 889 Fed.2d 906, 909 (9th Cir 1989.)

Where an official's misconduct is ongoing, the tolling of the limitations period during pending criminal proceedings would have a deterring effect on that person's misconduct. Relief from the burden of prosecution would enhance the ability of a person to bring a

Section 1983 action and seek compensation for violations of constitutional rights. In this way the delay contemplated by Section 945.3 would advance and not impede Section 1983's chief goals of compensation and deterrence. Id. at 909.

Much in the same way that the filing of a lawsuit might give a defendant access to prosecutorial materials, the filing of a civil rights complaint could entitle a prosecuting entity to a defendant's statements and other discovery, which may compromise the defendant's constitutional rights.

California's tolling provision permits a criminal defendant time to gauge the full extent of any constitutional violations as well as state causes of action. It allows him or her time to prepare a civil rights action and to deal with the responsibilities

which immediately follow filing a complaint. Burnett v. Grattan 468 U.S. 42, 50 (1983).[2]

California Government Code Section 945.3 is not only consistent with the important goals of the Civil Rights Act, but actually promotes its major remedial goals. It fosters the ability and willingness of a plaintiff to seek

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[2]. This Court has stated that state law is not "appropriate if it fails to take into account the practicalities that are involved in litigating federal rights claims and policies that are analogous to the goals of the Civil Rights Acts." These practicalities are based on getting the claimant into court. They include, the preparation involved, the requirement that an injured person must recognize the constitutional dimensions of his injury, and the ability to undertake discovery. The Court also pointed out that the administration of justice is not well served by the filing of premature, hastily drawn complaints. Burnett v. Grattan, supra 468 U.S. at p. 50, n. 13, a case concerning limitations periods applicable to civil rights suits.

redress of constitutional violations once the threat of pending prosecution has ended. Harding v. Galceran supra. at 909 The limited definition of what constitutes a "pending" prosecution may create a reasonable delay but in no way deters access to a federal forum for a claim for compensation for violation of civil rights. It has virtually no effect on a suit for equitable relief where constitutional violations overcome the strong federal policy against intervention in state judicial proceedings. In addition, Section 945.3 defers to the state legislature's underlying goals as mandated by 42 U.S.C. Section 1988.

California Government Code Section 945.3 is a Tolling Provision Which Applies to 42 U.S.C. Section 1983 Actions

Petitioner contends that California

Government Code Section 945.3 is an "anti-mischief statute" and not a tolling statute and is therefore not applicable to plaintiff's 1983 action. (Pet.App. p.6) Section 945.3 speaks for itself:

> No person charged by indictment, information complaint or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer...while the charges against the accused are pending....Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending...

Cal. Government Code Section 945.3 contains no language limiting its scope to state law claims. Mangels v. City of Orange 678 F.Supp. 1452, 1454 (C.D. Cal. 1988). This provision and underlying purposes clearly applies to any action against a peace officer while criminal

charges are pending. [T]he one year statute of limitations period applied to Section 1983 claims in California is interrelated to the policies behind the tolling provision expressed in Section 945.3." Harding v. Galceran supra at 908.

Simply characterizing this tolling provision as an "anti-mischief statute" cannot alter its function nor exempt it from federal law which mandates its application to Section 1983 suits.

Petitioner contends (Pet. 7) that Section 945.3 is inconsistent with Section 1983 because it was designed to limit liability whereas Section 1983 was designed to remedy civil rights, citing Williams v. Horvath 16 Cal.3d 834, 842 (1976). However, Williams v. Horvath concerned California's 100 day Notice of Claim requirement contained in Cal.

Government Code Section 911.2 which did indeed limit liability by providing an inordinately short time to file a claim against a public entity. Further, unlike limitations and tolling schemes, notice of claim rules are not indispensable prerequisites to litigation such that Congress intended federal courts to borrow applicable state law under Section 1988. Felder v. Casey 487 U.S. ___, 108 S.Ct. 2302, 2308 (1988). On the contrary, Cal. Government Code Section 945.3 explicitly extends the filing period for civil rights suits, enhancing the ability for a civil rights plaintiff to seek redress for constitutional violations.

Petitioners also argue (Pet. 6) that the Ninth Circuit ignored the sound reasoning of the California District court in Mangels v. City of Orange 678

F.Supp. 1452 (C.D. Cal. 1988.) The Court in Mangels held that Cal. Government Code ection 945.3 is inconsistent with two federal policies underlying the Civil Rights Act. The first is a requirement of "immediate access to the federal courts..." The second is a preference for federal as opposed to state fact-finding processes. Id. at p. 1455 citing Patsy v. Florida Board of Regents, 457 U.S. 496, 504 - 506.

Mangels is based on cases which decided that federal civil rights plaintiffs are not required to exhaust state administrative remedies as a prerequisite for bringing a Section 1983 action. Mangels failed to distinguish between a tolling provision and an exhaustion requirement, and failed to analyze differences between criminal and administrative proceedings. As a result

the decision in Mangels erroneously concluded that Section 945.3 is inconsistent with the policies underlying the Civil Rights Acts.

The California District Court reasoned that any delay in access to federal court was inconsistent with the goals of Section 1983 and therefore impermissible. This notion was based on the assumption that federal policy directs that findings of fact made in state **criminal proceedings** may not apply to federal civil rights claims. "By requiring resolution of related criminal charges prior to bringing a civil action, Section 945.3 creates a potential for deference to findings of fact made in the state criminal proceedings." Mangels v. City of Orange supra. at 1462.

According to Mangels, federal policy requires "entrusting the fact finding

process to a forum perceived by the 1871 Congress to be better insulated from local prejudice." Id.[3]

In the context of a criminal prosecution, this Court has specifically held that facts adjudicated during state criminal proceedings may be used in subsequent civil rights actions without contravening the policies of Section 1983.

> "[N]othing in the language of section 1983 remotely expresses any congressional intent to contravene the common-law rules of preclusion or to repeal the express statutory requirements of the predecessor of 28 U.S.C. section 1738. And nothing in

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[3] Mangels relied upon the decision in Patsy acknowledging that the 1871 Congress may not have felt such concern over state fact finding today so it looked to the legislative intent in passing 1997(e) which clearly indicated that Congress did not intend plaintiffs to exhaust administrative remedies before filing 1983 civil suits. Patsy v. Florida Board of Regents supra. at p. 507.

> the language or legislative history of section 1983 proves any congressional intent to deny binding effect to a state-court judgement or decision when the state court acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims and thereby has shown itself willing and able to protect federal rights. And nothing in the legislative history of section 1983 reveals any purpose to afford less deference to judgments in state criminals proceedings than to those in state civil proceedings. There is, in short, no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to relitigate an issue already decided in state court because the issue arose in a state proceeding in which he would rather have not been engaged at all." (footnote omitted) Allen v. McCurry 449 U.S. 90, 103-104 (1980).

Administrative proceedings and criminal proceedings must be distinguished. Strong federal law and policy constrains federal interference

with state criminal justice proceeding. Younger v. Harris supra. at 44. The Constitution safeguards persons and procedures within the criminal justice system. No such federal policy or law protects state administrative procedures and no federal law, such as Section 1988, mandates their application to federal civil rights claims. Thus the decision in Mangels that "no basis exists for treating Section 945.3 differently in this respect than other exhaustion requirement." is incorrect. Mangels v. City of Orange, supra at 1455.

The issue of state criminal courts adjudicating facts pertinent to federal civil rights claims has been decided. A state may make findings of fact which may then apply to subsequent civil rights actions without contravening the policies of Section 1983. Allen v. McCurry, supra

at p. 97-98. Thus the California District Court decision that the tolling provisions of Cal.Government Code Section 945.3 is inconsistent with federal civil rights statutes is clearly meritless. The Ninth Circuit has properly decided the questions at issue in the Petition for Writ of Certiorari.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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